

## Minor Omissions Policy for Weatherization Agency Procurement Actions

Wisconsin Weatherization Assistance Program (revised 02.13.2014)

Weatherization Grantees shall follow this policy when applicable. This policy applies to the sealed bid/proposal process and the receipt of bids/proposals with minor omissions, miscalculations and/or other issues that qualify for clarification under this policy. This policy for weatherization grantees is based on the State of Wisconsin Procurement Manual Policy Bidding Policy & Procedures for Official Sealed Bids.

### Background

It is important that bidders provide complete information as required by a Request for Bid (RFB). However, rejecting bids due to small, correctable errors such as a missing checklist, insufficient copies or missing signatures, can result in otherwise viable contractors – potentially some offering the best pricing – being removed from consideration. Such bid rejections can limit competition, reduce opportunities to contract with qualified providers, produce resentment among disqualified contractors and generate protests to agencies.

State procurement law and policy does not support the concept that any bid *must* be rejected if it does not contain all required documents and specifications. Instead, State Requests for Bids/Proposals (RFBs and RFPs) typically include language providing discretion to the contracting agency to reject incomplete bids. The State's Weatherization RFB template provides this flexibility in section 4, Bid Acceptance:

*“Bids that do not comply with instructions contained in this RFB **may** be rejected by the Agency. The Agency reserves the right to waive a particular specification if no Bidder meets that specification. The Agency may request reports on a Bidder's financial stability. The Agency **may** reject a Bid if the Bidder is determined to have inadequate financial means to provide the product or service being Bid. The Agency retains the right to accept or reject any or all Bids, or accept or reject any part of a Bid, deemed to be in the best interest of the Agency and the State of Wisconsin. The Agency shall be the sole judge as to compliance with the instructions contained in this RFB.... (emphasis added)”*

The State Procurement Manual includes policies authorizing agencies to allow bidders an opportunity to correct minor omissions in submitted bids. Bidding Policy and Procedure, Official Sealed Bid (PRO-C-5) provides the following guidance at Section VIII. (Withdrawal or Modification by Bidders to Bids):

C. Generally, no bidder may withdraw or modify a bid after the opening. However,

1. Bidders may correct minor omissions or miscalculations.

Example: The bid package does not contain a statement of ownership that is required, as announced in the RFB. The bidder may be allowed twenty-four (24) hours to deliver that information. In this case, the statement of ownership is a requirement that has no effect on the actual results of the bid.

2. Additions in form but not in substance are permitted.

Example: The purchasing office requested that items be bid in certain sequence. The bidder, however, has submitted them in the wrong sequence. In this case, the bidder may be allowed to change the order of the bid items, but only the order.

3. It is reasonable to permit a bidder to correct errors of addition, multiplication, or arithmetic mistakes.

Example: A bidder totals the bid prices: "5 x 5 equal 10". The bidder may be allowed to change the total from "10" to "25". Do not permit changes in quantity or in unit prices.

4. The bidder may be allowed to clarify a specific portion of a bid, i.e., upon request from the purchasing agent.
5. In the case of substantial errors, the bidder may be allowed to withdraw the bid after the opening.

Example: A \$1 million contract is erroneously bid for \$1,000. In this case, the bidder may be permitted to withdraw.

- D. No change is allowed that would impair the interests of the state or would be inequitable to other bidders.

### **Procedures for Minor Omissions**

The interests of the Weatherization Assistance Program and low income residents are served by encouraging and attracting participation in the program by qualified contractors. To that end, Weatherization Grantees shall ensure implementation of the following policies and best practices:

1. Comply with the instructions in the Weatherization Manual and the RFB templates. Note that the templates may not be modified without permission.
2. Upon receipt, agencies shall examine each bid to determine whether it complies with all requirements of the RFB. In the event of minor omissions, miscalculations or issues requiring clarification (see list at paragraph 3 below), the agency may permit bidders an opportunity to supply elements necessary to produce a responsive bid.

If an agency permits bidders to make minor corrections, it will notify each bidder in writing (email and/or fax acceptable) that its bid was deemed non-responsive because it did not comply with instructions or specifications contained in this RFB. The communication must:

- a. Identify the specific problem(s) in the bid that led to a determination of non-responsiveness,
- b. Provide a deadline (a specific date and time not less than 24 business/working hours forward) and method of response (hard copy, email or fax) by which the bidder must supply elements necessary to produce a complete and responsive bid; and
- c. Indicate that failure to respond by the deadline will result in rejection of the bid.

A Grantee shall provide a fair and equal opportunity for all bidders to correct minor omissions, miscalculations or issues requiring clarification. No preferential treatment or deference may be given to any bidder(s).

The agency will make the final determination on whether opportunities for corrective action are granted; a bidder should never assume they will be given an opportunity to correct a non-responsive bid.

3. Agencies may permit the following corrections of minor omissions, miscalculations or issues requiring clarification without the prior approval of the Division of Energy Services.

- a. Missing signature(s) and/or vendor contact information.
- b. Missing data specification sheets for appliances, equipment or products to be supplied by the bidder (and other items listed in section 8 of the RFB).
- c. Missing copies of the bid as required in the RFB.
- d. Cost sheet miscalculations limited to addition, multiplication, or arithmetic mistakes, as in the following example:

$$\$50 \text{ (price per unit)} \times 100 \text{ (estimated number of units)} = \$500$$

- e. Missing information relative to the Vendor Information Form.
- f. Missing information relative to the Vendor Reference Form.

Any other issues involving potential minor omissions, miscalculations or issues requiring clarification shall be submitted to the Division of Energy Services for review prior to contacting a bidder for corrective information.

4. The following are NOT minor omissions, miscalculations or issues requiring clarification. As such, no bidder shall be provided an opportunity to correct the following issues after the bid submission deadline.

- a. **Unit pricing:** In no event shall a bidder be allowed to change the unit price provided in its original bid. If a bidder fails to provide unit pricing in its original bid, it shall not be allowed to provide the missing information after the bid submission deadline.
- b. **Volume or quantity:** In no event shall a bidder be allowed to change the volume or quantity of appliances, equipment or products provided in its original bid. If a bidder fails to provide volume or quantity information in its original bid, it shall not be allowed to provide the missing information after the bid submission deadline.
- c. **Volume or quantity statement:** In no event shall a bidder be allowed to amend or provide a missing written statement of what volume or quantity of work it can handle to meet the bid requirements.
- d. **Deadlines:** In no event shall a bidder be allowed to submit a bid or other requested material after a deadline established by the agency.